

Californians for Renewable Energy, Inc. (CARE)

821 Lakeknoll Dr.
Sunnyvale, CA 94089

Californians for Renewable
Energy, Inc. (CARE)
C/o Michael Boyd
821 Lakeknoll Dr.
Sunnyvale, CA 94089

State of California

Energy Resources Conservation
And Development Commission

In the Matter of:)
) Docket No. 99-AFC-3
) INTERVENOR'S RESPONSE
Application for Certification for the) TO DATA REQUEST 03-16-00
Metcalf Energy Center [Calpine) CONCERNING CULTURAL
Corporation and Bechtel Enterprises, Inc.]) RESOURCES AND
_____) ENVIRONMENTAL JUSTICE

Chronology of response to data request

On March 16, 2000 Intervenor CARE received the following data request from CEC Metcalf Project Manager, Paul C. Richins Jr., attached to his notice¹ of March 16, 2000.

"Please provide any documentation to support the claim of cultural resource(s) at the Metcalf site or along the proposed linear facilities, and provide specific information on the location of said cultural resource(s). Specific information relating to the location of cultural resources should be filed under a request of confidentiality in order to protect the resource."

Intervenor retained the services of consultant archaeologist Dr. Alan Leventhal, who along with ecological resource consultant Dr. Shawn Smallwood, began to perform survey work on the proposed Metcalf Energy site on April 11, 2000. Dr. Leventhal in his E-mail of April 12, 2000 titled *Cultural Resource Management Concerns on Proposed Metcalf Energy Parcel* reported the following.²

¹ California Energy Commission METCALF ENERGY CENTER DATA REQUEST March 16, 2000 (Exhibit 2)

² E-mail from, Dr. Alan Leventhal, April 12, 2000 - Subject: Cultural Resource Management Concerns on Proposed Metcalf Energy Parcel (Exhibit 3)

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"On Tuesday, April 11, 2000, I joined Dr. Shawn Smallwood, Mr. Steven De Young and another representative from the Metcalf Energy Center consortium at the proposed Metcalf Energy Center parcel. We were escorted around the main flat portion of the parcel, but did not have a chance of inspecting the west and north sides along Fisher Creek and the upslope areas."

Intervenor CARE requests further access to the site to complete the consultant surveys of the site on the west and North sides along Fisher Creek and the upslope areas.

In regards to the presence of cultural resources in the vicinity of the site, Dr. Leventhal states the following in his April 12, 2000 e-mail.

"The proposed project is located along one of the most important drainages in south Santa Clara County -- Coyote Creek. In the past various highway projects paralleling Coyote Creek produced some very significant discoveries. Not only evidence of large pre-contact cemeteries but also the oldest known site in the Valley, CA-SCL-178 - the Metcalf Road Site, with consecutive basal radiocarbon of 8500, 9190, 9200, 9960 years before present (Hildebrandt 1983 In, Archaeological Research of the Southern Santa Clara County Located in the Route 101 Corridor prepared for Caltrans, District 4). CA-SCL-178 lies within 1/2 mile of the proposed parcel and therefore, falls within it's paleo-catchment area."

In regards to the presence of cultural resources on the site, Dr. Leventhal states the following ethnohistory and relevant scientific analysis in his April 12, 2000 e-mail.

"Furthermore, ethnohistoric research conduct several years earlier by Chester King³ for the preliminary phases of the 101 route corridor project, provided evidence that the ethnohistoric village of Matalan may possibly be located within the parcel boundaries. The Matalan Tribal group was referred to by the Mission padres as the San Carlos group with as many as twenty settlements or villages within their territory. Some of the converts came were identified as coming from the village of Laguna Seca, which appears to be the largest and most permanent within their territory. King believes that "it is safe to say that the Matalan tribelet numbered over 1,000 people (In Dietz, Archaeological Test Excavations for Construction of Freeway 101. 1977:54)⁴. King a year later conducted another ethnohistoric study on the Matalan/San Carlos tribal group. He states "the people of the San Carlos tribe lived in the

³ Almaden Valley Ethnohistory by Chester King Cartier, R. ed. 1978 The Archeological Mitigation of 4-SCI-152 (attached to email as AlmadenValley.pdf)

⁴ Matalan Ethnohistory by Chester King, In Dietz, Archaeological Test Excavations for Construction of Freeway 101. 1977:54 (attached to email as Matalan.pdf)

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Almaden and Coyote Valleys with their tribal center at Rancho Laguna Seca" (1978:40)."

In regards to the presence of cultural resources on the site, Dr. Leventhal states the following in his April 12, 2000 e-mail.

"The actual location of the Village of Matalan has never been found, nonetheless, the proposed parcel is a prime location for several reasons: 1. It is shielded from the cold northwesterly winds by Tulare Hill, 2. The upslope of the hill provides height to view the entire Laguna Seca/Coyote Valley for economic, social, military and ceremonial reasons, 3. The major Coyote Creek riparian corridor with diverse food resources are readily accessible, 4. Fisher Creek, based upon the size of the creek bed cobbles has been around for quite a long time. This creek would have provided fresh water, fish, and other exploitable resources necessary for year round permanent settlement. If this is indeed the location of the Village of Matalan, then this site has historical significance to both the Muwekma Ohlone tribe (some of the lineages are Clarenos from Mission Santa Clara) and also the scientific community. Furthermore, given the proximity to CA-SCL-178, the site probably contains stratified occupational levels as well as shifting cemetery loci."

Following receipt of Dr. Leventhal's e-mail of April 12, 2000, Intervenor contacted two of the current property owners of the proposed Metcalf Energy Center site, a Mr. Oliver Kraemer, and a Mr. Phil Pon, who were at meeting together on the evening of the 12th. In Intervenor's phone conversation with Mr. Kraemer the question was asked if any of the owners knew of any Native American artifacts discovered by the owners on the site. Mr. Kraemer stated that Mr. Pon knew of the discovery of a bowl and other artifacts near an existing artesian spring on the hill on the property. Intervenor notified Dr. Leventhal of this new information. Dr. Leventhal responded to this new information in his e-mail of April 14, 2000 as follows.⁵

"After finding out that the landowners of the proposed project locality recall the presence of Indian bowls (mortars) by the artesian springs adds further significance of the presence of ancestral Muwekma Ohlone settlement and economic activities within the area. Furthermore, artesian wells may also have served as ceremonial shrines for the Ohlones, in addition to providing a source of potable fresh water."

Facts Point to the Cultural Resources Analysis by the Applicant as Inadequate

Intervenor CARE contends that the cultural resource analysis by the applicant is inadequate and fails to meet the requirements of Section 106 of the National Historic

⁵ E-mail From: Dr. Alan Leventhal, April 14, 2000 - Subject: Significance of additional information (Exhibit 4)

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Preservation Act of 1966 (36CFR80) and CEQA Guidelines Section 15064.5.⁶ Intervenor's exhibit 1 describes the requirements of CEQA Guidelines Section 15064.5 as follows.

"This section establishes rules for the analysis of historical resources, including archaeological resources, in order to determine whether a project may have a substantial adverse effect on the significance of the resource. This incorporates provisions previously contained in Appendix K of the Guidelines. Subsection (a) relies upon the holding in *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896 to describe the relative significance of resources which are listed in the California Register of Historical Resources, listed in a local register or survey or eligible for listing, or that may be considered locally significant despite not being listed or eligible for listing. Subsection (b) describes those actions which have substantial adverse effects. Subsection (c) describes the relationship between historical resources and archaeological resources, as well as limits on the cost of mitigating impacts on unique archaeological resources. Subsections (d) and (e) discuss the protocol to be followed if Native American or other human remains are discovered"

Intervenor contends the following needs to be completed on the part of the Commission and the Applicant in order to comply with the requirements of federal and state law.

- I. Perform an EIR/EIS analysis on cultural resources including a Cultural Resource Management (CMR) assessment.
- II. Acknowledge the presence of cultural resources affected by the project or on the project site.
- III. Evaluation of the resources.
- IV. Determination of adverse effects on the cultural resources.

Intervenor CARE identifies the requirements that the applicant, as outlined by Dr. Leventhal in his April 12, 2000 e-mail, perform the CMR assessment as follows.

"Proposed Scope of CRM Work

Based upon the above, the project needs to conduct a full CRM assessment of the parcel especially within any and all areas that will necessitate subsurface disturbance. The following is a recommended, but not exhaustive, preliminary plan of action: 1. A complete archaeological literature search be conducted at the Northwest Archaeological Inventory at Sonoma State University, 2. A formal on-site systematic reconnaissance be conducted by an archaeological

⁶ CEQA Guidelines Section 15064.5. Determining the Significance of Impacts to Archeological and Historical Resources (Exhibit 1)

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team for both side of Fisher Creek and the slope and uplands for cultural artifacts and features (e.g., petroglyphs, pictographs, rock rings, bedrock milling and mortar stations, etc.), 3. Placement of backhoe test excavation trenches be established in order to determine presence/absence of cultural materials and subsurface features, 4) the Muwekma Ohlone Tribe should be brought in for immediate consultation prior to commencement of any work and hiring of archaeological firms (archaeological firm should be compatible with the tribe's views), 5) based upon the preliminary phases stated above a report should be issued making additional recommendations for archaeological data recovery program and burial avoidance and or removal with the Muwekma Tribe and formulating an overall mitigation plan, 6) a final report should include analysis and an update ethnohistory and perhaps and educational display to benefit the general public and the tribe (this should be in consultation with the Muwekma Tribal Council."

Intervenor includes in this response to data request that the notification of the Army Corps of Engineers and the California State Historic Preservation Office of cultural resources present on the site. Intervenor has copied both offices of this correspondence.

Conclusion

Presence of Cultural Resources Raises Concern for Environmental Justice

Intervenor concludes by stating that the presence of cultural resources and the affect of the proposed project on these resources is an issue of Environmental Justice for the Native American population of the Muwekma Ohlone Tribe of the San Francisco Bay. The *U.S. Environmental Protection Agency's Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* Paragraph 4, page 11⁷, states,

"A factor that should be considered in assessing the presence of a minority community is that a minority group comprising a relatively small percentage of the total population surrounding the project may experience a disparately high and adverse effect.... potential effects to on-or off-reservation tribal resources (e.g., treaty-protected resources, cultural resources and/or sacred sites) may disparately affect the local Native American community and implicate the federal trust responsibility to tribes."

Intervenor CARE requests the Commission immediately establish consultation with the appropriate federal and state offices. CARE request the Commission complete a CMR assessment of the proposed site in consultation with these offices, representatives of the Muwekma Ohlone Tribe of the San Francisco Bay, and their ethnographical

⁷ The *U.S. Environmental Protection Agency's Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* Paragraph 4, page 11 (Exhibit 5)

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representative, Dr. Alan Leventhal. CARE continues to need access to the site to complete survey work by the biologist and archeologist.

Michael E. Boyd

Michael E. Boyd 4-14-00

CC. Richard Stradford –Army Corps of Engineers
Hans Kreutzberg – State Historic Preservation Office
CEC Dockets
CEC -PAO
CEC -Paul Richins
Rosemary Camber, Chairwoman Muwekma Ohlone Tribe
Dr. Alan Leventhal
Dr. Shawn Smallwood

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Exhibit 1

CEQA Guidelines Section 15064.5. Determining the Significance of Impacts to Archeological and Historical Resources

- (a) For purposes of this section, the term "historical resources" shall include the following:
- (1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4850 et seq.).
 - (2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
 - (3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:
 - (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
 - (B) Is associated with the lives of persons important in our past;
 - (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
 - (D) Has yielded, or may be likely to yield, information important in prehistory or history.
 - (4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.
- (b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.
- (1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.
 - (2) The significance of an historical resource is materially impaired when a project:
 - (A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or
 - (B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
 - (C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.
 - (3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic

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Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code SS5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission. Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native american.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

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(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Note: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.2, 21084, and 21084.1, Public Resources Code; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

Discussion: This section establishes rules for the analysis of historical resources, including archaeological resources, in order to determine whether a project may have a substantial adverse effect on the significance of the resource. This incorporates provisions previously contained in Appendix K of the Guidelines. Subsection (a) relies upon the holding in *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896 to describe the relative significance of resources which are listed in the California Register of Historical Resources, listed in a local register or survey or eligible for listing, or that may be considered locally significant despite not being listed or eligible for listing. Subsection (b) describes those actions which have substantial adverse effects. Subsection (c) describes the relationship between historical resources and archaeological resources, as well as limits on the cost of mitigating impacts on unique archaeological resources. Subsections (d) and (e) discuss the protocol to be followed if Native American or other human remains are discovered.

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Exhibit 2

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

March 16, 2000

Michael E. Boyd
821 Lakeknoll Drive
Sunnyvale, CA 94089

Dear Mr. Boyd:

METCALF ENERGY CENTER DATA REQUEST

Pursuant to Title 20, California Code of Regulations, section 1716, the California Energy Commission staff requests the information specified in the enclosed data request. The information requested is necessary for us to more fully understand the project and assess whether the project will result in significant environmental impacts.

A single data request is being made in the area of cultural resources. Written responses to the enclosed data requests are due to the Energy Commission staff on or before April 16, 2000, or at such date mutually agreed upon.

If you are unable to provide the information requested, need additional time, or object to providing the requested information, please send a written notice to both Robert A. Laurie, Presiding Member of the Committee for the Metcalf Energy Center proceeding, and to me, within 15 days of receipt of this notice. The notification must contain the reasons for not providing the information, the need for additional time and the grounds for any objections (see Title 20, California Code of Regulations section 1716 (e)).

If you have any questions regarding the enclosed data request, please call me at (916) 654-4074.

Sincerely,

Paul C. Richins, Jr.
Energy Commission Project Manager

Enclosure

cc: Metcalf Proof of Service List

s:\projects\metcalfdatabreqs\michael-boyd.doc

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Exhibit 3

From: Dr. Alan Leventhal April 12, 2000

Subject: Cultural Resource Management Concerns on Proposed Metcalf Energy Parcel

Dear Mr. Boyd,

On Tuesday, April 11, 2000, I joined Dr. Shawn Smallwood, Mr. Steven De Young and another representative from the Metcalf Energy Center consortium at the proposed Metcalf Energy Center parcel. We were escorted around the main flat portion of the parcel, but did not have a chance of inspecting the west and north sides along Fisher Creek and the upslope areas. In general the viewing conditions for identifying cultural indicators and/or artifacts was not ideal due to ground plant cover, historic debris and disturbance of the upper soils by heavy equipment (especially when the earthen levy was constructed).

As you know I am a trained archaeologist and have been at San Jose State University since 1978. I have also worked as an archaeologist and tribal ethnohistorian for the Muwekma Ohlone Tribe of the San Francisco Bay. The Muwekma Ohlone Tribe is in the final throes of obtaining their reaffirmed status as a Federally Recognized Tribe. On May 24, 1996, the BIA for made a positive determination of "previous unambiguous Federal Recognition" as defined under 25CFR83.8. Furthermore, Muwekma has a CRM firm Ohlone Families Consulting Services which has been conducting CRM work since 1984 and is recognized by the Interior Department as a Native American owned business under the Buy Indian Act since 1986.

It was after some discussion with the Muwekma Tribal representatives that I became concerned about the proposed project. The proposed project is located along one of the most important drainages in south Santa Clara County -- Coyote Creek. In the past various highway projects paralleling Coyote Creek produced some very significant discoveries. Not only evidence of large pre-contact cemeteries but also the oldest known site in the Valley, CA-SCL-178 - the Metcalf Road Site, with consecutive basal radiocarbon of 8500, 9190, 9200, 9960 years before present (Hildebrandt 1983 In, Archaeological Research of the Southern Santa Clara County Located in the Route 101 Corridor prepared for Caltrans, District 4). CA-SCL-178 lies within 1/2 mile of the proposed parcel and therefore, falls within it's paleo-catchment area. Furthermore, ethnohistoric research conduct several years earlier by Chester King for the preliminary phases of the 101 route corridor project, provided evidence that the ethnohistoric village of Matalan may possibly be located within the parcel boundaries. The Matalan Tribal group was referred to by the Mission padres as the San Carlos group with as many as twenty settlements or villages within their territory. Some of the converts came were identified as coming from the village of Laguna Seca, which appears to be the largest and most permanent within their territory. King believes that "it is safe to say that the Matalan tribelet numbered over 1,000 people (In Dietz, Archaeological Test Excavations for Construction of Freeway 101. 1977:54). King a year later conducted another ethnohistoric study on the Matalan/San Carlos tribal group. He states "the people of the San

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Carlos tribe lived in the Almaden and Coyote Valleys with their tribal center at Rancho Laguna Seca" (1978:40). The actual location of the Village of Matalan has never been found, nonetheless, the proposed parcel is a prime location for several reasons: 1. It is shielded from the cold northwesterly winds by Tulare Hill, 2. The upslope of the hill provides height to view the entire Laguna Seca/Coyote Valley for economic, social, military and ceremonial reasons, 3. The major Coyote Creek riparian corridor with diverse food resources are readily accessible, 4. Fisher Creek, based upon the size of the creek bed cobbles has been around for quite a long time. This creek would have provided fresh water, fish, and other exploitable resources necessary for year round permanent settlement. If this is indeed the location of the Village of Matalan, then this site has historical significance to both the Muwekma Ohlone tribe (some of the lineages are Clarenos from Mission Santa Clara) and also the scientific community. Furthermore, given the proximity to CA-SCL-178, the site probably contains stratified occupational levels as well as shifting cemetery loci.

Proposed Scope of CRM Work

Based upon the above, the project needs to conduct a full CRM assessment of the parcel especially within any and all areas that will necessitate subsurface disturbance. The following is a recommended, but not exhaustive, preliminary plan of action: 1. A complete archaeological literature search be conducted at the Northwest Archaeological Inventory at Sonoma State University, 2. A formal on-site systematic reconnaissance be conducted by an archaeological team for both side of Fisher Creek and the slope and uplands for cultural artifacts and features (e.g., petroglyphs, pictographs, rock rings, bedrock milling and mortar stations, etc.), 3. Placement of backhoe test excavation trenches be established in order to determine presence/absence of cultural materials and subsurface features, 4) the Muwekma Ohlone Tribe should be brought in for immediate consultation prior to commencement of any work and hiring of archaeological firms (archaeological firm should be compatible with the tribe's views), 5) based upon the preliminary phases stated above a report should be issued making additional recommendations for archaeological data recovery program and burial avoidance and or removal with the Muwekma Tribe and formulating an overall mitigation plan, 6) a final report should include analysis and an update ethnohistory and perhaps and educational display to benefit the general public and the tribe (this should be in consultation with the Muwekma Tribal Council).

I hope that this brief report helps in the Environmental and Cultural Resource Management review process. If you have any questions, please feel free to contact me at my office 408-924-5772 or the Muwekma Ohlone Tribe, Rosemary Camber, Chairwoman 408-441-6185.

Sincerely,

Alan Leventhal aleventh@email.sjsu.edu

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Exhibit 4

From: Dr. Alan Leventhal April 14, 2000
Subject: Significance of additional information

Dear Mr. Boyd,

After finding out that the landowners of the proposed project locality recall the presence of Indian bowls (mortars) by the artesian springs adds further significance of the presence of ancestral Muwekma Ohlone settlement and economic activities within the area. Furthermore, artesian wells may also have served as ceremonial shrines for the Ohlones, in addition to providing a source of potable fresh water.

On another note, I have continued to review additional information regarding the location of Matalan and discovered the following statement by archaeologist Joseph Winter in his 1978 publication entitled Tamien - 6000 Years in an American City:

The largest tribelet in Tamien was called Matalan, or San Carlos by the priests. It consisted of a major village near the town of Coyote, with numerous smaller villages in the Almaden Valley, along the Santa Teresa Hills, in the Coyote Valley, and perhaps in the uplands around Chesbro Reservoir. ... The large dominant village probably contained half of the population of the tribe, which numbered over 1000 people. ... Other large villages were located in the Almaden Valley along Alamitos Creek, which was originally called "Arroyo de los Capitancillos" (Little Chiefs), perhaps because the villages of the area were lead by subchiefs under the control of a headchief at Coyote. (1978:11).

I hope that information helps to add to the significance of this locality. Questions, please feel free to contact me.

Alan Leventhal

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Exhibit 5

U.S. Environmental Protection Agency's Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses Paragraph 4, page 11,

“A factor that should be considered in assessing the presence of a minority community is that a minority group comprising a relatively small percentage of the total population surrounding the project may experience a disparately high and adverse effect. This can result due to the group's use of, or dependence on, potentially affected natural resources, or due to the group's daily or cumulative exposure to environmental pollutants as a result of their close proximity to the source. The data may show that a distinct minority population may be below the thresholds defined in the IWG key terms guidance on minority population. However, as a result of particular cultural practices, that population may experience disparately high and adverse effects. For example, the construction of a new treatment plant that will discharge to a river or stream used by subsistence anglers may affect that portion of the total population. Also, potential effects to on-or off-reservation tribal resources (e.g., treaty-protected resources, cultural resources and/or sacred sites) may disparately affect the local Native American community and implicate the federal trust responsibility to tribes.”